

No. 16473 ✓

United States
Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
vs.

NATIONAL AUTOMOTIVE FIBRES, INC.,
AND TEXTILE UNION LOCAL No. 146,
TEXTILE WORKERS UNION OF AMER-
ICA, AFL-CIO, Respondents.

Transcript of Record

Petition For Enforcement of Order of The
National Labor Relations Board

FILED

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United States of America
Before the National Labor Relations Board
Division of Trial Examiners
Branch Office
San Francisco, California

Case No. 20-CA-1371

NATIONAL AUTOMOTIVE FIBRES, INC.,
Respondent,
and

CURTIS MOLTON, an Individual,
Charging Party.

Case No. 20-CB-538

TEXTILE UNION LOCAL No. 146, TEXTILE
WORKERS UNION OF AMERICA, AFL-
CIO,
Respondent,
and

CURTIS MOLTON, an Individual,
Charging Party.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

Statement of the Case

The consolidated complaint herein alleges in effect violation of Section 8 (b) (1) (A) and (2) by the Respondent Union, and violation of Section 8 (a) (1) and (3) by the Respondent Employer, in

that the former required the discharge of Curtis Molton, the charging party herein, because of his refusal to pay the Union a fine, and that the latter discharged Molton, on the Union's request, with knowledge that the request was based on Molton's refusal to pay the Union a fine.

In their respective answers, the Respondents admitted the jurisdictional allegations but denied the alleged commission of unfair labor practices.

At the hearing on the complaint, conducted before the undersigned Trial Examiner at San Francisco, California, on February 11, 12, 1958, all parties were represented, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence on the issues. Upon the conclusion of the evidence, the General Counsel's representative at the hearing argued his position on the record, and thereafter, the Respondent Union availed itself of the privilege accorded all parties to file a brief.

Upon the entire record in the case and from my observation of the witnesses, I make the following:

Findings of Fact

I. The business of the Employer

National Automotive Fibres, Inc., the Respondent Employer herein, is a Delaware corporation with its principal office and place of business in Detroit, Michigan, engaged in the business of manufacturing cushion padding and exterior trim for automotive use. The Respondent Employer owns and op-

erates plants in New York, New Jersey, Ohio, and in Los Angeles and Oakland, California. Only the Oakland plant is involved in these proceedings. Total purchases shipped to the Oakland plant from outside the State of California, exceed \$500,000 annually. On these facts jurisdiction is admitted and found.

II. The labor organization involved

Textile Union Local No. 146, Textile Workers Union of America, AFL-CIO, the Respondent Union herein, is a labor organization within the meaning of Section 2 (5) of the Act.

III. The unfair labor practices

Since May 1, 1956, the Union and the Employer have had an admittedly valid union shop contract providing, inter alia, for payroll deduction of union dues. In July, 1956, Employee Curtis Molton was laid off but not discharged by the Employer. On being notified of the layoff, Molton applied to Employee Edward Billie, the Union's steward in the plant, for a withdrawal card. Billie informed Molton that he was not eligible for a withdrawal card because he owed a fine for not attending union meetings. The fine was one or not more than two dollars. Molton did not pay the fine and did not get a withdrawal card. A person holding a withdrawal card was not required to pay union dues during the period of his layoff. The Union's by-laws provide for the issuance of withdrawal cards to members in good standing upon leaving the in-

dustry, and since Molton was not leaving the industry the Union was not required under its bylaws to issue him a withdrawal card even were he in good standing at the time the request was made. However, admittedly it was the uniform practice of the Union's Local with which Molton was affiliated to issue withdrawal cards, on request, to such of its members as were in good standing whenever they were laid off. Clearly also, the practice was to issue withdrawal cards only to members in good standing and by virtue of his refusal to pay a one or two dollar fine, Molton was not a member in good standing.

On January 9, 1957, Molton was recalled to work. Starting with February, his union dues were deducted by the Employer. His January dues, not subject to payroll deduction because of bookkeeping routine, he paid directly to the Union, together with a fine and an assessment, in May, 1957. About February, 1957, Gus Billie, then a shop chairman, and in March or April, Ben Statum, secretary of the Union's Local, informed Molton that he would have to pay up his union dues for the period of his lay-off. Molton protested that he did not think this was a just requirement inasmuch as he had applied for a withdrawal card on the day he was laid off. Later, Sonia Baltrun, business manager of the Local, came to the plant where Molton worked and in the presence of Johnny Cambria, Molton's foreman, and others, informed Molton that he would either have to pay union dues for the some five

months of his layoff, or an initiation fee of \$10 for reinstatement in the Union. According to Molton, he again protested that he did not think this was fair inasmuch as he had applied for a withdrawal, and since his recollection appeared to be the clearest on the point his testimony is credited. It was his further credited testimony that he protested the action "threatened" by Baltrun to Ben Thomas, president of the Local in the plant, and that Thomas said he would hold the matter in abeyance until Molton appeared before the Local's executive board.

In the latter part of May or June, Molton appeared before the Local's executive board and was informed by it that he would have to pay his dues for the period of the layoff or pay an initiation fee. Molton then agreed that he would pay his back dues. He did not, however, thereafter at any time make an actual tender of the dues in question.

According to him, about June 25 Baltrun reminded him of his promise to pay his back dues, and he replied that if she had a blank check he would sign it but that she replied she would not furnish him with one if she had one because she doubted that he had the money in the bank. Baltrun denied that such an offer was made, but assuming without finding that it was, it would not in my opinion, amount to an actual tender of the dues, whether or not Molton had money in the bank to cover the amount of the check. Obviously, if he had had any actual intention of paying his dues at that time, and had the money, he could have arranged

to have had a check cashed. According to Molton, after being refused a blank check by Baltrun, he promised that he would tender his dues the following Friday, June 28. It happened, however, that he was laid off that Friday, returning to work the following Monday. On that day, according to him, he attempted to see Jimmie Clark, a union steward, but Clark was not at work and presently Molton went home because he became ill after an hour or two at work. Admittedly, there were other union stewards in the plant to whom he might have tendered his dues, though he "more or less always dealt with Jimmie Clark unless he wasn't there." Molton did not return to work until July 9, during which time there was a death in his family and during which time he made no effort to tender his union dues, and when he returned on July 9 he found that his card had been pulled. His foreman informed him that the Union had caused his card to be pulled because of his failure to pay his back dues. Thereupon, he left the plant.

As a matter of fact, by letter dated July 1, Baltrun had notified the Employer that Molton was not a union member in good standing because he was delinquent in his dues payments, and had requested Molton's discharge pursuant to the terms of the union shop agreement. The Employer complied with the Union's request.

It is established to my satisfaction that the Respondent Employer was aware of the circumstance under which Molton came to be delinquent in his

dues payments. I have found that Molton protested the Union's refusal to issue him a withdrawal card in his foreman's presence, and his foreman at the time of his discharge, Harold Harnack, admittedly had been advised of Molton's failure to obtain a withdrawal card because he refused to pay a fine, and was also informed by the plant superintendent, Chartier, when the latter instructed him to make out a termination slip, of the circumstances leading to the Union's discharge request.

Subsequent to his discharge, Molton went to the Union's office and, according to his testimony, there informed Baltrun that he would pay the back dues required of him if in doing so he could get his job back, but was informed by Baltrun that even if he paid up he would not be sure of getting his job back and that the Union's executive Board had required his discharge because he was a "bad influence" in the Union. On cross-examination, in testifying on this conversation, he testified that Baltrun said she had decided that he was a bad influence in the Union. According to him, he did not inquire and she did not explain what she meant by that. Baltrun's version of the conversation was that Molton asked for his job back and when she inquired if he had the money for his delinquent dues he replied in the negative but said he would "straighten" that out. She informed him that she could not trust him and that ended the interview. I find that Baltrun did not tell Molton that the Union's executive board had required his discharge because he

was a "bad influence" in the Union. If the Union rightfully required his discharge, it was under no legal obligation thereafter to attempt to get his job back for him, whether or not following his discharge he made a dues tender. Assuming without finding that Baltrun told him he was a "bad influence" in the Union, this may very well have stemmed from the fact that he agreed to pay dues for the layoff period and then evaded doing so.

Summarization and Conclusions

The facts upon which a decision here rests are, I think, clearly defined.

On the day that he was laid off Molton requested and was refused a withdrawal card. It is true that he made only one request and that to a shop steward, and did not pursue the matter further. The fine in question being no more than two dollars, it may be assumed that Molton did not at that time attach a great deal of significance to his failure to obtain a withdrawal card, but there was no corroboration of Baltrun's hearsay testimony that she was informed by the shop steward that Molton did not want a withdrawal card because he did not intend to return to work with this Employer, and no weight can be attached to it. The denial of a withdrawal card by the shop steward was a denial by the Union, and Molton was not required to pursue the matter further, though had he been greatly interested at the time I think he would have ap-

pealed the matter to higher ranking union representatives.¹

The withdrawal card was denied Molton because he refused to pay a one or two dollar fine for not attending one or two union meetings, as the case may be.

The denial of the withdrawal card was not discriminatory with respect to Molton individually, for it was the uniform practice of the Union to issue withdrawal cards to laid off members only when the said members were in good standing at the time the withdrawal was requested, and, because of his refusal to pay the fine assessed against him, Molton was not a member in good standing.

The Union was not required by its bylaws to issue withdrawals to laid off members but only to members leaving the industry, and Molton did not apply on the basis of leaving the industry but in his status as a laid off employee. However, it was the uniform practice of this Local to issue such withdrawals to laid off members and had Molton been a member in good standing at the time he requested a withdrawal he would have received it.

Molton did not cease to be an employee during the period of his layoff, and he was not expelled from the Union. Baltrun testified that after four months of non-dues payments, he was "dropped"

¹ He was diligent enough in his efforts to evade the payment of dues for his layoff period, a requirement that he must have been aware of at the time the union steward told him he did not qualify for a withdrawal.

from the union rolls, but this appears to have been no more than a bookkeeping formula. The payroll deductions for his union dues continued after he was recalled to work and the Union accepted his January, 1957, dues not covered by payroll deductions.

Prior to the meeting of the Union's executive board in May or June, 1957, Molton refused to pay dues for the period of his layoff, but at that meeting agreed to pay the dues demanded of him.

Molton did not at any time make an actual tender of these dues. His various explanations of his failure to do so I found unconvincing. He impressed me as being an intelligent and somewhat crafty individual.

Unable to collect the back dues demanded of Molton, the Union on July 1, 1957, requested his discharge.

The reason given for the discharge request was that Molton was not a member in good standing because of dues' delinquency.

The Union did not therefore request Molton's discharge because of his refusal to pay a fine but because he refused to pay his union dues for the period of his layoff.

Not at any time following its refusal to issue a withdrawal card to Molton, did the Union request Molton to pay the fines outstanding at the time of the refusal.

The broad issue is whether the dues, in the payment of which Molton was clearly delinquent, were "periodic dues * * * uniformly required as a condi-

tion of acquiring or retaining membership.”² They were periodic dues uniformly required of all members who did not hold withdrawal cards during the period of a layoff. Molton did not hold a withdrawal card because he refused to pay fines imposed on him for failure to attend one or two union meetings. Therefore, while the immediate cause of his discharge was his dues’ delinquency, the said dues’ delinquency arose from the fact that he refused to pay a fine or fines. From this, the General Counsel argues that the refusal to pay a fine was the real or proximate cause of the discharge.

Had the Union requested his discharge because of his refusal to pay a fine for non-attendance of union meetings, the discharge patently would have been unlawful, for the Board has uniformly held that fines of this character are not “periodic dues” within the meaning of the Act. But the Union did not seek his discharge on his refusal to pay the fines. It did refuse him a withdrawal card because he was not a member in good standing, and it was its uniform practice to issue withdrawal cards only to members in good standing. Obviously, there is

² The issue arising from Molton’s discharge, as framed by the pleadings and the contentions of the parties, is based upon those provisions of Section 8 (a) (3) and 8 (b) (2) which ban discrimination against an employee subject to a union-shop contract if his “membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.”

nothing in the Act which would require the Union to waive the payment of dues during a layoff period, while the employee remained an employee subject to the terms of the union shop contract, by the issuance of withdrawal cards or otherwise. The question is strictly one of its right to withhold the waiver from one classification of members (those not in good standing) while granting it to another (members in good standing).

The Board has held that "periodic dues and initiation fees uniformly required" does not mean that in all cases the initiation fees and dues must be the same for all classifications of employees. In *Food Machinery and Chemical Corporation*, 99 NLRB 1430, it held that an initiation fee for former union members twice that required of new members was not discriminatory because it was based on a reasonable classification. In this decision it said:

Congress did not intend the Board to find labor organizations in violation of the law, where, as here, following well-settled practice, they have done no more than to establish a different but fairly reasonable, classification of former members as distinguished from new applicants. In our opinion a contrary interpretation is unnecessarily harsh and is required by neither the spirit nor the literal language of that section. [Section 8 (b) (5).] * * * the Respondent Union did not per se violate the Act by according former members special consideration in setting their reinstatement fee, whether that fee was greater or less than the initiation fee

required of new or other reasonable classifications of applicants. The burden was on the General Counsel to prove not only that the fee charged Bauer was disparate, but that it was discriminatory in its application.³

The Board in this decision makes the further comment that had Bauer, the employee involved, as a former member of an affiliated lodge, held an honorary withdrawal or retiring card from that Local, he would have been charged only a nominal initiation fee, and, it must be inferred, had this been the case the Board would have regarded it as permissible. In other words, classifications for purposes of disparate though non-discriminatory fees, of former members holding withdrawal cards, former members not holding withdrawal cards, and new members, would, under this decision, satisfy the Act's requirement of initiation fees "uniformly" required. I find nothing in this decision from which it reasonably could be inferred that the union's uniformly applied rules governing the issuance or non-issuance of "honorary withdrawal or retiring" cards would be considered material to a determina-

³ While this rationale applied specifically to an alleged 8 (b) (5) violation, it was also the basis for the Board's dismissal of the 8 (b) (1) and (2) allegations of the same complaint. Obviously, if reasonable classifications may form the basis for a differential in initiation fees, the same would be true with respect to periodic dues, and this is implied in an earlier decision in *The Electric Auto-Lite Company* case, 99 NLRB 1073, cited by the Board in its *Food Machinery* decision.

tion of the reasonableness of the classification under which former members holding such cards would be charged a lesser initiation fee than former members not holding such cards. As has been noted, here the Union's refusal to issue Molton a withdrawal card for his layoff period, was according to the Union's uniform practice. The parallel is obvious.

In a more recent case, *Kuner-Empson Company*, 106 NLRB 670, 673, 674, the Board found no violation under a union shop contract where the Union expelled one of its members for dual unionism and, 14 months later, caused her discharge when she refused to pay an initiation fee as a new member. In this decision the Board said:

In determining the rights and obligations of expelled members under circumstances such as these, we take the view that expelled members are not in a privileged class perpetually immune from union-security provisions and from any obligation of tendering dues and that they cannot remain in that privileged category despite successive contracts which would otherwise impose new conditions of employment upon them in that regard. We therefore find that expelled members are subject to valid-union-security provisions in existing contracts to which the union from which they were expelled is a party. To hold otherwise would be to contravene the clearly expressed intent of Congress to protect labor organizations by permissive provisos

against "free riders" and to permit them to maintain discipline in the ranks.

Clearly, had the union caused this employee's discharge because it had expelled her for dual unionism, there would have been a violation, and, in the instant case, had the Union caused Molton's discharge because he refused to pay a fine, there would have been a violation. This much is above argument. In the Kumer-Empson case, the union having converted an employee subject to union shop requirements into a "free rider," obviously was not required to continue her as a free rider indefinitely; it could put a stop to the free ride at any time while the union shop contract existed by admitting her once more as a member; but it did more than merely end her status as a free rider: it required her to pay a new initiation fee, and this would not have been required of her had she not been expelled from the union for dual unionism.

Again, the parallel is obvious. Here the Union refused to convert Molton into a free rider for the period of his layoff by the issuance to him of a withdrawal card, for the reason that he refused to pay a fine. Some 5 months later, when he had been recalled to work, the Union required him to pay dues for his layoff period, or an initiation fee, and when he refused, caused his discharge. It may be argued with considerable cogency that if the refusal to pay a fine was the cause or proximate cause of Molton's discharge, the employee's expulsion for dual unionism in the Kumer-Empson case,

was the cause or proximate cause of the discharge in that case. There are, however, certain distinguishing factors.

Here there was no hiatus in Molton's employment. He continued to be an employee throughout the period of his layoff. In the Food Machinery case, the Board was dealing with newly hired employees, and whether they held or did not hold withdrawal cards referred to prior employment. Had there been a break in Molton's employment instead of a layoff, I think there could be no question under the Food Machinery case, that he could have been classified as a former member without a withdrawal and required to pay a new initiation fee greater than that required of former members with withdrawal cards.

In the Kuner-Empson case, a new union shop agreement was made between the time the employee in question was expelled from the Union and the time when her discharge was caused by her refusal to pay a new initiation fee. It appears that the Board attached weight to this factor as well as to the time elapsed between the expulsion from the Union and the discharge.

In short, in both of these cases there is an intervening factor not present here. In both the issue was initiation fees required under a new contract, whereas here the discharge was made under the same contract in effect at the time of Molton's layoff. A new contract with a valid union shop provision, may be said to initiate new obligations with

respect to union membership. In the Food Machinery case the Board apparently did not find it material in determining the reasonableness of classifications with respect to initiation fees, to consider the circumstances under which a former union member in a prior place of employment and under a different contract, was granted or denied a withdrawal card. In the Kuner-Empson case, the Board apparently considered the circumstances under which an employee was expelled from membership under a prior contract immaterial in determining her obligations arising from the current existing contract under which she was discharged, although her employee status had been continuous under both contracts. I know of no case where the Board has approved classifications governing initiation fees and dues requirements based on a violation of union rules with respect to fines, assessments, and similar categories, where there is continuity of employment under one contract. The distinction may appear to be a thin one, but in the Electric Auto-Lite decision (citation footnote 3, *supra*), the Board plainly said that disparate dues requirements may not lawfully rest (as a basis for discharge) on classifications of employees who attend, and who do not attend union meetings. That there was just such a classification here for purposes of dues' requirements during layoff periods is clear, and Molton's discharge stemmed from that classification. I think that here we have no efficient intervening factor which reasonably may be said to bar Mol-

ton's refusal to pay a fine as the proximate cause of his discharge.

To approach the issue from a different angle, there was not in this case a separation of the demand for dues from the demand for a fine or fines, such as existed in the National Lead decision (National Lead Company, 106 NLRB 545, 547) where the Board overruled its Trial Examiner and found no violation. In the National Lead case, the Union first refused to accept a member's dues unless the member also paid certain outstanding fines, but later, without reference to fines, required the member to pay all delinquent dues. Here, no such separation is possible because the Union's refusal of a withdrawal card was based on Molton's refusal to pay a fine, and had the withdrawal card been issued to him there would have been no dues' delinquency. True, when the Union demanded dues for his layoff period it did not also demand the payment of fines and no mention was made of fines, and this was a separation of sorts, but here the causative factor for the dues' delinquency was the refusal to pay a fine and there was no such causative factor in the National Lead case.

Being of the opinion that the weight of Board authority, as best I can weigh it, supports the General Counsel's position, I find that by causing Molton's discharge the Union violated Section 8 (b) (1) (A) and (2) of the Act, and that by discharging Molton with knowledge of the circumstances grounding the Union's discharge request, the Employer violated Section 8 (a) (1) and (3) of the Act.

IV. The effect of the unfair labor practices upon commerce

The activities of the Respondents set forth in Section III, above, occurring in connection with the operations of the Employer set forth in Section I, above, have a close, intimate, and substantial relation to trade, traffic and commerce among the several States, and tend to lead to labor disputes burdening commerce and the free flow of commerce.

V. The remedy

It having been found that the Employer discharged Curtis Molton in violation of Section 8 (a) (3) of the Act, and that the Union caused the Employer so to discharge Molton, thereby violating Section 8 (b) (2) of the Act, and Molton thereafter having been reinstated, it will be recommended that the Employer and the Union jointly and severally make Molton whole for any loss of pay he may have suffered by reason of the discrimination against him, by payment to him of a sum of money equal to that he would have earned in the Respondent Employer's employ from the date of his discharge to the date of his reinstatement, less his net earnings during said period, the back pay to be computed on a quarterly basis in the manner established in *F. W. Woolworth Company*, 90 NLRB 289. As provided in *Woolworth*, it will be recommended that the Employer on request make available to the Board payroll and other records, in order to facilitate the computation of the back pay.

On the basis of the foregoing findings of fact, and upon the entire record in the case, the undersigned makes the following:

Conclusions of Law

1. The Respondent Union is a labor organization within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of Curtis Molton, the Employer has engaged in unfair labor practices within the meaning of Section 8 (a) (3) of the Act, and thereby has interfered with, restrained and coerced its employees in the exercise of rights guaranteed by Section 7 of the Act, in violation of Section 8 (a) (1) of the Act.

3. By causing the Employer to discriminate in regard to the hire and tenure of employment of Curtis Molton in violation of Section 8 (a) (3) of the Act, the Respondent Union has engaged in unfair labor practices within the meaning of Section 8 (b) (2) of the Act, thereby restraining and coercing employees in the exercise of rights guaranteed by Section 7 of the Act, in violation of Section 8 (b) (1) (A) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and 2 (7) of the Act.

Recommendations

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in this proceeding, it is recommended that:

1. National Automotive Fibres, Inc., its agents, successors, and assigns, shall:

(1) Cease and desist from:

(a) Encouraging or discouraging membership of its employees in the Respondent Union or any other labor organization, by discriminatorily discharging any employee or in any other manner discriminating against any employee in regard to his hire, tenure, or any other term or condition of employment, except as authorized by Section 8 (a) (3) of the Act;

(b) In any other manner interfering with, restraining, or coercing employees in the exercise of the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

(2) Take the following affirmative action designed to effectuate the policies of the Act:

(a) Make Curtis Molton whole in the manner, according to the method, and under the conditions set forth in Section V, above, entitled "The Remedy";

(b) Post in conspicuous places, including places

where notices to employees are customarily posted, at its place of business in Oakland, California, copies of the notice attached hereto and marked Appendix A. Copies of said notice, to be furnished by the Regional Director for the Twentieth Region of the Board, shall, after being signed by an authorized representative of the Respondent Employer, be posted by it immediately upon receipt thereof and maintained by it for a period of 60 consecutive days thereafter. Reasonable steps shall be taken by it to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the said Regional Director in writing, within 20 days from the date of the receipt of this Intermediate Report and Recommended Order, what steps it has taken to comply with the foregoing recommendations.

2. Textile Union Local No. 146, Textile Workers Union of America, AFL-CIO, its officers, representatives, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Causing, or attempting to cause, the Respondent Employer, or any other employer, except as authorized by Section 8 (a) (3) of the Act, to discharge employees or in any other manner discriminate against them in regard to their hire, tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization;

(b) Restraining or coercing employees of the Re-

spondent Employer, or any other employer, in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

(2) Take the following affirmative action designed to effectuate the policies of the Act:

(a) Jointly and severally with the Respondent Employer, make Curtis Molton whole in the manner, according to the method, and under the conditions set forth in Section V, above, entitled "The remedy";

(b) Post in conspicuous places, including places where notices to members are customarily posted, at its office and usual membership meeting place, copies of the notice attached hereto and marked Appendix B. Copies of said notice, to be furnished by the Regional Director for the Twentieth Region of the Board, shall, after being duly signed by a duly authorized representative of the said Respondent Union, be posted by it immediately upon receipt thereof and maintained by it for a period of 60 consecutive days thereafter. Reasonable steps shall be taken by it to insure that said notices are

not altered, defaced, or covered by any other material.

(c) Notify the said Regional Director in writing, within 20 days from the date of the receipt of this Intermediate Report and Recommended Order, what steps the said Respondent Union has taken to comply with the foregoing recommendations applicable to it.

It is further recommended that, unless on or before 20 days from the receipt of this Intermediate Report and Recommended Order, the Respondent Employer and the Respondent Union notify the said Regional Director in writing that they will comply with the foregoing recommendations respectively applicable to them, the National Labor Relations Board issue an order requiring each of the said Respondents to take the action respectively required of them above.

Dated this 24th day of April, 1958.

/s/ WILLIAM E. SPENCER,
Trial Examiner.

APPENDIX A

Notice to All Employees: Pursuant to the Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

Appendix A—(Continued)

We Will Not encourage or discourage membership of our employees in Textile Union Local No. 146, Textile Workers Union of America, AFL-CIO, or any other labor organization, by discriminatorily discharging employees or in any other manner discriminating against them in regard to their hire, tenure of employment, or any term or condition of employment, except as authorized by Section 8 (a) (3) of the National Labor Relations Act.

We Will Not in any other manner interfere with, restrain, or coerce employees in the exercise of the right to self-organization, to form or assist labor organizations, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the National Labor Relations Act.

We Will jointly and severally with Textile Union Local No. 146, Textile Workers Union of America, AFL-CIO, make Curtis Molton whole for any loss of pay he suffered as a result of discrimination against him.

All of our employees are free to become, remain, or refrain from becoming, members of any labor

Appendix A—(Continued)

organization, except to the extent that this right may be affected by an agreement in conformity with Section 8 (a) (3) of the National Labor Relations Act.

National Automotive Fibres, Inc.
(Employer)

Dated.....

By
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

APPENDIX B

Notice to Members of This Union and Employees of National Automotive Fibres, Inc.: Pursuant to the Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby give notice that:

We Will Not cause, or attempt to cause, National Automotive Fibres, Inc., or any other employer, except in accordance with Section 8 (a) (3) of the National Labor Relations Act, to discharge employees or in any other manner discriminate against them in regard to their hire, tenure of employment, or any term or condition of employment.

Appendix B—(Continued)

We Will Not in any other manner restrain or coerce employees of National Automotive Fibres, Inc., or of any other employer, in the exercise of the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the National Labor Relations Act.

We Will jointly and severally with National Automotive Fibres, Inc., make Curtis Molton whole for any loss of pay he suffered as a result of discrimination against him.

Textile Union Local No. 146, Textile Workers Union of America, AFL-CIO
(Labor Organization)

Dated.....

By
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

United States of America
Before the National Labor Relations Board

Case No. 20-CA-1371

NATIONAL AUTOMOTIVE FIBRES, INC.,
Respondent,
and

CURTIS MOLTON, an Individual,
Charging Party.

Case No. 20-CB-538

TEXTILE UNION LOCAL No. 146, TEXTILE
WORKERS UNION OF AMERICA, AFL-
CIO, Respondent,
and

CURTIS MOLTON, an Individual,
Charging Party.

DECISION AND ORDER

On April 24, 1958, Trial Examiner William E. Spencer issued his Intermediate Report in the above-entitled proceeding finding that the Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the

Respondent Union filed exceptions to the Intermediate Report and a supporting brief.¹

Pursuant to the provision of Section 3 (b) of the Act, the Board has delegated its powers in connection with these cases to a three-member panel.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in these cases, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the following addition.

We agree with the Trial Examiner that the Employer and the Union violated, respectively, Section 8 (a) (1) and (3), and Section 8 (b) (1) (A), and 8 (b) (2) of the Act in effecting the discharge of Curtis Molton pursuant to their union-security agreement. The basic issue, as indicated in the Intermediate Report, is whether the back dues demanded by the Union for the 5 months of Molton's layoff were "periodic dues * * * uniformly required as a condition of * * * retaining membership."² As the Trial Examiner points out, the "causative factor" for Molton's dues' delinquency was his refusal to pay a fine for nonattendance at a Union meeting. The Board has held that the statutory

¹ The Union's request for oral argument is hereby denied as, in our opinion, the record, exceptions and brief adequately present the issues and positions of the parties.

² See footnote 2 of the Intermediate Report.

provisions involved herein include the requirement that dues be charged to all members alike or that any distinction be based upon reasonable general classifications.³ In our opinion, a classification of employees based upon failure to pay fines is not a "reasonable" classification within the meaning of the *Electro Auto-Lite* and *Food Machinery* decisions. Thus, when the obligation to pay back dues depends in effect on whether or not a member attends Union meetings, that type of charge is clearly not one that is uniformly applied. Accordingly, we find, as did the Trial Examiner, that by bringing about the discharge of Curtis Molton, the Employer and the Union engaged in conduct proscribed respectively by Section 8 (a) (1) and (3), and Section 8 (b) (1) (A) and 8 (b) (2) of the Act.

Order

Upon the entire record in these cases, and pursuant to Section 9 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby ordered the following:

1. National Automotive Fibres, Inc., its agents, successors, and assigns, shall:

(1) Cease and desist from:

(a) Encouraging or discouraging membership of its employees in the Respondent Union or any other labor organization, by discriminatorily discharging

³ The *Electro Auto-Lite Company*, 92 NLRB 1073, 1077. See also *Food Machinery and Chemical Corporation*, 99 NLRB 1430, 1431.

any employee or in any other manner discriminating against any employee in regard to his hire, tenure, or any other term or condition of employment, except as authorized by Section 8 (a) (3) of the Act;

(b) In any other manner interfering with, restraining, or coercing employees in the exercise of the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

(2) Take the following affirmative action designed to effectuate the policies of the Act:

(a) Make Curtis Molton whole in the manner, according to the method, and under the conditions set forth in Section V of the Intermediate Report, entitled "The remedy";

(b) Preserve and make available to the Board or its agents upon request, for examination and copying, all payroll records, social-security payment records, time cards, personnel records and reports, and all other records necessary to analyze the amounts of back pay due and the rights of employment under the terms of this Order.

(c) Post in conspicuous places, including places where notices to employees are customarily posted,

at its place of business in Oakland, California, copies of the notice attached to the Intermediate Report, and marked Appendix A.⁴ Copies of said notice, to be furnished by the Regional Director for the Twentieth Region of the Board shall after being signed by an authorized representative of the Respondent Employer, be posted by it immediately upon receipt thereof and maintained by it for a period of 60 consecutive days thereafter. Reasonable steps shall be taken by it to insure that said notices are not altered, defaced, or covered by any other material;

(d) Notify the said Regional Director in writing, within ten (10) days from the date of this Decision, what steps it has taken to comply herewith.

2. Textile Union Local No. 146, Textile Workers Union of America, AFL-CIO, its officers, representatives, agents, successors, and assigns, shall:

(1) Cease and desist from:

(a) Causing, or attempting to cause, the Respondent Employer, or any other employer, except as authorized by Section 8 (a) (3) of the Act, to discharge employees or in any other manner discriminate against them in regard to their hire, tenure

⁴ This notice shall be amended by substituting for the words "The Recommendations of the Trial Examiner," the words "A Decision and Order." In the event that this Order is enforced by the decree of a United States Court of Appeals there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

of employment or any term or condition of employment to encourage or discourage membership in any labor organization;

(b) Restraining or coercing employees of the Respondent Employer, or any other employer, in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

(2) Take the following affirmative action designed to effectuate the policies of the Act:

(a) Jointly and severally with the Respondent Employer, make Curtis Molton whole in the manner, according to the method, and under the conditions set forth in Section V of the Intermediate Report entitled "The remedy";

(b) Post in conspicuous places, including places where notices to members are customarily posted, at its office and usual membership meeting place, copies of the notice attached to the Intermediate Report and marked Appendix B. Copies of said notice, to be furnished by the Regional Director for the Twentieth Region of the Board, shall, after being duly signed by a duly authorized representative of the said Respondent Union, be posted by it immediately upon receipt thereof and maintained

by it for a period of 60 consecutive days thereafter. Reasonable steps shall be taken by it to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the said Regional Director in writing, within ten (10) days from the date of this Decision and Order, what steps the said Respondent Union has taken to comply herewith.

Dated, Washington, D. C., October 14, 1958.

PHILIP RAY RODGERS, Member,
JOSEPH ALTON JENKINS,
Member,
JOHN H. FANNING, Member,
[Seal] National Labor Relations Board.

United States Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

NATIONAL AUTOMOTIVE FIBRES, INC., and
TEXTILE UNION LOCAL No. 146, TEX-
TILE WORKERS UNION OF AMERICA,
AFL-CIO, Respondents.

CERTIFICATE OF THE NATIONAL LABOR
RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 102.92,

Rules and Regulations of the National Labor Relations Board—Series 7, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record of a proceeding had before said Board and known upon its record as Case Nos. 20-CA-1371, and 20-CB-583. Such transcript includes the pleadings and testimony and evidence upon which the order of the Board in said proceeding was entered, and includes also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

1. Stenographic transcript of testimony taken before Trial Examiner William E. Spencer, February 11, 12, 1958, together with all exhibits introduced in evidence.

2. Copy of Trial Examiner William E. Spencer's Intermediate Report and Recommended Order dated April 24, 1958, (annexed to item 4 hereof).

3. Respondent Union's exceptions to the Intermediate Report received May 19, 1958, together with a request for oral argument before the Board. (Oral argument denied — see footnote 1, Decision and Order).

4. Copy of Decision and Order issued by the National Labor Relations Board on October 14, 1958, with Intermediate Report attached thereto.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor

Relations Board in the city of Washington, District of Columbia, this day of

[Seal] /s/ FRANK M. KLEILER,
Executive Secretary, National
Labor Relations Board.

Before the National Labor Relations Board
Twentieth Region

Case No. 20-CA-1371

In the Matter of:

NATIONAL AUTOMOTIVE FIBRES, INC.,
Respondent,
and

CURTIS MOLTON, an individual,
Charging Party.

Case No. 20-CB-538

In the Matter of:

TEXTILE UNION LOCAL No. 146, TEXTILE
WORKERS UNION OF AMERICA, AFL-
CIO, Respondent,
and

CURTIS MOLTON, an individual,
Charging Party.

TRANSCRIPT OF PROCEEDINGS

232 U. S. Appraisers Building, 630 Sansome
Street, San Francisco 11, California, Tuesday, February 11, 1958.

Pursuant to notice, the above-entitled matter came on for hearing at 10:00 o'clock, a.m.

Before: William E. Spencer, Trial Examiner. [1]*

Appearances: David Karasick, Attorney, Twentieth Region, National Labor Relations Board, 856 U. S. Appraisers Building, 630 Sansome Street, San Francisco 11, California, appearing as counsel for the General Counsel. N. A. Warner, 2230 Livingston, Oakland, California, appearing on behalf of National Automotive Fibres, Inc., Respondent Employer. James F. Galliano, Attorney, 1419 Broadway, Oakland 12, California, appearing for Benjamin Wyle, Chief Counsel, Textile Workers Union of America, AFL-CIO, 99 University Place, New York 3, New York, on behalf of Textile Union Local No. 146, Textile Workers Union of America, AFL-CIO, Respondent Union. [2]

* * * * *

Mr. Karasick: As a result of an off-the-record discussion, it is my understanding that the parties stipulate and agree hereto as follows:

That the facts with respect to the business operations of the company are as stated in paragraph II of the complaint which is in evidence as General Counsel's Exhibit 5, and the Respondent Employer admits that it is engaged in commerce within the meaning of the Act.

Is that correct and do you so stipulate, Mr. Warner?

* Page numbers appearing at top of page of original Reporter's Transcript of Record.

Mr. Warner: I so stipulate.

Mr. Karasick: Mr. Galliano?

Mr. Galliano: Yes, I agree with you.

Mr. Karasick: It is my understanding further, Mr. Examiner, that the parties hereto stipulate and agree that the Respondent Union, Textile Union Local No. 146, Textile Workers of America, AFL-CIO, is a labor organization within the meaning of the Act.

Is that a correct statement?

Mr. Galliano: We have so admitted in our answer, that is correct.

Mr. Karasick: Thank you, Mr. Galliano.

Mr. Warner?

Mr. Warner: So stipulated. [8]

* * * * *

CURTIS MOLTON

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows: [9]

Direct Examination

* * * * *

Q. (By Mr. Karasick): You are presently employed by the Respondent, National Automotive Fibres, Inc., are you not? A. Yes.

Q. When were you first hired by that employer?

A. 1948, September the 29th.

Q. And did you work steadily for that employer from that time until you were laid off in July 1956, with the exception of a couple of other times

(Testimony of Curtis Molton.)

when there have been layoffs because of lack of work? A. Yes.

Q. After each of those layoffs were you recalled by the company? A. Yes.

Q. In July 1956 you were laid off, were you not? A. Yes.

Q. And what was the reason for the layoff at that time? A. Lack of work.

Q. Do you remember the date of the layoff at that time, in July?

A. It was around the 18th of July. [10]

* * * * *

Q. At the time you were laid off, how long before did you hear about it?

A. That morning.

Q. The morning of the layoff? A. Yes.

Q. After you heard you were going to be laid off did you talk to anyone about it from the union?

A. Yes.

Q. Whom did you talk to?

A. Edward Billie.

Mr. Galliano: Pardon me. May I have that name?

Mr. Karasick: Edward Billie.

* * * * *

Q. As well as you can recall now, will you tell the Examiner [11] what you said and what Mr. Billie said on that occasion?

Mr. Galliano: May we have what other persons were present, if any, at the conversation?

Mr. Karasick: Surely.

(Testimony of Curtis Molton.)

Q. (By Mr. Karasick): Were other people present at the time this conversation occurred, Mr. Molton? A. Yes, there was.

Q. Do you remember the names of any of them?

A. Not specifically.

Q. Was there one or two or many or what?

A. Well, there was quite a few.

Q. Was this during the working time or a recess time?

A. This was during a recess period.

Q. And it was in the smoking room of the plant? A. Yes.

Q. And you can't remember any specific individual, is that right, by name, who was there?

A. Well, not at the—I couldn't remember all the people because quite a few comes in the smoking room at break time.

Trial Examiner: The question is: Do you remember any of them? Do you remember the names of any of them? If you don't just say you don't.

The Witness: No, I can't recall them.

Q. (By Mr. Karasick): Will you now tell the Examiner, please, what you said to Mr. Billie and what he said to you, as well as you can recall? [12]

A. I asked him for a withdrawal because I was being laid off, and I handed him my book.

Q. Did he reply?

A. Yes. He told me I couldn't have a withdrawal due to the fact that I owed a fine.

Q. That you owed a fine? A. Yes.

Q. Did he tell you what you owed the fine for?

(Testimony of Curtis Molton.)

A. Yes. It was for not attending the meetings.

Q. Do you remember how much the fine was?

A. It was one or two dollars.

Q. You are not sure whether it was one or two dollars, is that right? A. No.

Q. Did you get a withdrawal? A. No.

Q. Did you pay the fine? A. No.

Q. After you were laid off did the company recall you to work? A. Yes.

Q. When was that?

A. The 9th—about the 8th or 9th of January 1957.

Q. And you were returned to your old job finally as operator, is that right? A. Yes. [13]

Q. And at the same rate of pay, \$1.60½ an hour? A. Yes.

Q. Before you were laid off in July 1956 did the company deduct your dues, union dues, each month? A. Yes.

Q. After you got back in January 1957 did the company deduct your dues? A. Yes.

Q. Beginning with what month?

A. February.

Q. They didn't deduct them for January?

A. No.

Q. Did you pay your dues for January 1957 to the union? A. Yes.

Q. Whom did you pay them to?

A. James Clark.

Q. And who was James Clark?—Hold that just a minute.

(Testimony of Curtis Molton.)

Mr. Karasick: May I have a stipulation as to the official position of James Clark in the union? My understanding is he is a steward. Is he not?

Mr. Galliano: Is James Clark a steward?

Mr. Edward Billie: That is right.

Mr. Karasick: May it be so stipulated? [14]

Mr. Galliano: That is right, surely.

Mr. Karasick: Mr. Warner?

Mr. Warner: Yes. [15]

* * * * *

Mr. Karasick: Mr. Examiner, it is my understanding, as a result of an off-the-record discussion, the parties hereto agree that Edward Billie at all times material herein was a steward of the Respondent Union.

Is that a correct statement? Do you so stipulate, Mr. Galliano?

Mr. Galliano: Yes, that is correct.

Mr. Warner: As far as I know, that is correct.

Mr. Karasick: Thank you.

Q. (By Mr. Karasick): Mr. Molton, directing your attention to the month of February 1957, did you during that month have any discussion with any representative of the Union about money that the Union claimed you owed them? A. Yes.

Q. Whom did you have the discussion with?

A. With Gus Billie.

Q. And——

Mr. Galliano: Pardon me. I didn't get the name.

Q. (By Mr. Karasick): Is Gus Billie a brother of Edward Billie? A. Yes.

(Testimony of Curtis Molton.)

Q. What was Gus Billie's job with the Union at that time? A. I don't know.

Q. Was he a representative of the Union at all? Did he do work for the Union of some sort or other? [17] A. Yes.

Q. When were you working, days or nights?

A. Nights.

Q. At that time?

A. I was working swing shift.

Q. Now, do you remember the date in February that he talked to you?

A. No, I don't remember the exact date.

Q. Do you remember whether it was the first, the middle or the latter part of February?

A. It was along about the latter part of February.

Q. Latter part of February? A. Yes.

Q. Where were you at the time?

A. I was running inside the plant.

Q. Was anyone else present besides you and Gus Billie? A. No.

Q. As well as you can recall, will you state what Billie, Gus Billie, said to you and what you said to him?

A. Yes. He told me that I would have to pay—that Sonia had came in and told, gave him a note or something that I would have to pay my back dues for the time that I was off.

Q. Did you say anything to that?

A. Yes. I told him I didn't think it would be fair for me to have to pay back dues for the time

(Testimony of Curtis Molton.)

that I was off, due to [18] the fact that I had asked for a withdrawal the day that I was laid off.

Q. Did you tell him whether or not the withdrawal had been given you or why it had not been given you?

A. Yes; I told him that they refused to give it to me because of the fines.

Q. Is there anything else you can recall during the conversation at that time or is that in substance what was said?

A. That is approximately all that was said.

Q. Do you know Ben Statum? A. Yes.

Mr. Karasick: And his job, I understand the parties are willing to stipulate, is and has at all times material herein been secretary of Local 146?

Mr. Galliano: Who was that?

Mr. Karasick: It is my understanding that the parties are willing to stipulate that Ben Statum at all times material herein has been secretary of Local 146 of the Respondent Union. Is that correct?

Mr. Galliano: Is that correct?

Mr. Edward Billie: Yes.

Mr. Galliano: So I am informed. We will stipulate to that.

Mr. Karasick: Mr. Warner?

Mr. Warner: Yes. [19]

Mr. Galliano: May we have a moment here to ourselves?

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

(Testimony of Curtis Molton.)

Q. (By Mr. Karasick): After Gus Billie had spoken to you did Ben Statum talk to you about that matter? A. Yes.

Q. And how long after Gus Billie talked to you did Statum talk to you about it?

A. Well, it wasn't—it was, it must have been along about March, the last part of March or the first part of April.

Q. Last part of March or early April?

A. Somewhere in there.

Q. Is that your best recollection? A. Yes.

Q. And where were you at the time? Were you working in the plant?

A. I was in the plant, yes, at that time.

Q. Was anyone else present when you talked with him? A. No.

Q. Will you tell the Examiner and the parties what he said to you and what you said to him as well as you can now recall?

A. He told me that I would have to pay back dues for the period that I was laid off.

Mr. Galliano: Pardon me. May we have the witness speak up a little louder, please? [20]

Trial Examiner: Will you speak up a little louder, please?

A. He told me I would have to pay back dues for the time that I was off. And I said to him that I had asked for a withdrawal and was refused due to the fact that I was supposed to have owed a fine or something.

(Testimony of Curtis Molton.)

Q. (By Mr. Karasick): In other words, you told him what you had previously told Gus Billie?

A. Yes.

Q. Was there anything else of substance said in this conversation, that you remember?

A. Yes. I told him that I did not think it was fair for me to have to pay back dues for the time that I was off, as I had asked for a withdrawal.

Q. Do you know Sonia Baltrun? A. Yes.

Q. Do you know what her job is with the Union?

A. No more than—not exactly. I don't know the exact title.

Mr. Karasick: All right, may it be stipulated Sonia Baltrun is the business manager of Respondent Local 146?

Mr. Galliano: That is correct.

Mr. Warner: Yes.

Q. (By Mr. Karasick): Did Sonia Baltrun speak to you about this matter after your conversation with Statum? A. Yes. [21]

Q. Do you remember the month that occurred?

A. It was along about the last part of April or first or middle part of May.

Q. So it was either April or May? You are not sure? A. Yes.

Q. Where were you at the time?

A. In the plant.

Q. Was anyone else present besides you and Mrs. Baltrun on that occasion? A. Yes.

Q. Who? A. There was Johnnie Cambria.

Q. And who was Johnnie Cambria?

(Testimony of Curtis Molton.)

A. He was foreman of the department.

Q. Was that the department you worked in?

A. Yes.

Q. He was your foreman? A. Yes.

Q. Was there anyone else present at the conversation that you can recall?

A. Not right then. But later on Ben Statum came up.

Q. So Ben Statum wasn't there during all the conversation, is that right? A. No.

Q. But you and Sonia and Cambria were there during all that was said, is that right?

A. Yes.

Q. You were at your machine working?

A. Yes.

Q. Who came up first, Sonia Baltrun or Johnnie Cambria or both?

A. Johnnie Cambria called my attention, but they were both more or less simultaneous.

Q. You mean they came up and Johnnie Cambria called your attention to the fact that they were there, is that right? A. Yes.

Q. Now will you please state as well as you can recall what was said and who said it?

A. Sonia told me that I would have to pay the back dues for the time that I was off or either join the union, as a union member, new union member, and lose my seniority both in the union and as far as the plant was concerned.

Q. So she gave you a choice of joining the union

(Testimony of Curtis Molton.)

anew or paying the back dues—she mentioned what this other alternative was that you could follow?

A. Yes; rejoin the union, pay a new initiation fee.

Q. Then she said these other things you have said, right? A. Yes.

Q. Did you say anything about it?

A. Yes. I told her I didn't think it was fair for me to [23] have to pay back dues, due to the fact that I had asked for a withdrawal at the time that I was laid off and was refused.

Q. Did you tell her why you had been refused?

A. Yes; on account of the fine.

Q. Did you say that? A. Yes.

Q. Did she say anything to that?

A. Yes. She told me that more or less she was going to pull my card the next day, at the end of that shift, that the next morning my card would be pulled.

Q. Did she say that your card would be pulled, no matter what you did?

A. She said if I didn't pay, agree to pay her.

Q. Now, did Johnnie Cambria say anything during this conversation? A. Yes.

Q. What did he say?

A. He said if she authorized it he would have no choice except but to pull it.

Q. If she what?

A. If she told him to pull the card, he would have to pull it.

Q. Was anything else said, in substance, regard-

(Testimony of Curtis Molton.)

ing this matter, said at that conversation, that you can recall? Or is this about it? [24]

A. Not between us. Not between the three parties, no.

Q. Later did you talk about the matter to someone else? A. Yes.

Q. That same day? A. Yes.

Q. Who else did you speak to about it?

A. Ben Thomas.

Q. Ben Thomas? A. Yes.

Q. What position did Ben Thomas hold at that time?

A. He was the president of the local.

Q. The president of the local? A. Yes.

Q. Where did you speak to him?

A. In the opening room.

Q. In the plant, that is? A. Yes.

Q. And was anyone else present when you spoke to Thomas? A. Yes.

Q. Just the two of you?

A. Just the two of us.

Q. Will you please relate as well as you can recall now what you said to him and what he said to you?

A. Yes. I told him, too, that Sonia was intending to pull my card for the back dues, and I didn't think it was fair, due [25] to the fact that I had been laid off and I had asked for a withdrawal.

Q. Did he say anything? A. Yes.

Q. What did he say?

A. He told me more or less not to worry about

(Testimony of Curtis Molton.)

it because he would hold it until I went before the executive board.

Q. Now, after that conversation did you appear before the executive board of the local?

A. Yes.

Q. And when was that, do you recall?

A. This was about the third Monday in May, or June.

Trial Examiner: Third Monday in May or June?

The Witness: Yes, sir.

Trial Examiner: Which?

The Witness: I don't know.

Q. (By Mr. Karasick): You are not sure which month, is that right? A. No.

Q. Why do you set the time as being the third Monday?

A. Well, that is when they was holding union meetings at that particular time.

Q. Was the meeting that you appeared before the executive board on the same day that a union meeting was held? A. Yes. [26]

Q. And, as far as you can recall, it was a regular union meeting, is that it? A. Yes.

Q. And that is how you established the third Monday, is that it? A. Yes.

Q. Without going into all the details of the executive board meeting, what was the general discussion as far as you were concerned at that meeting? What did they tell you about yourself at that meeting, in substance?

A. Well, they more or less—we discussed that——

(Testimony of Curtis Molton.)

Mr. Galliano: Will you speak up, please, a little bit?

A. (Continuing) It was decided that I would either have to pay the back dues——

Q. (By Mr. Karasick): Now, the back dues were for what?

A. For the 1956, the five months in which I was off.

Q. The layoff period? A. Yes.

Q. All right. Go on.

A. Or either join the union all over again as a new member.

Q. In which event you would have to do what; did they say?

A. I would come in as a new member and be the first one laid off.

Q. Would you have to pay anything?

A. Yes. I would have to pay the new initiation fee. [27]

* * * * *

Q. When did you next report to work at the plant after July 1st, 1957?

A. On the 9th of July.

Q. 1957? A. Yes. [31]

Q. Did you go to work that day? A. No.

Q. Why not? A. My card had been pulled.

Q. You mean you came to the time clock and it was out of the rack, your card was out of the rack? A. Yes.

Q. What did you do then?

A. I went to the foreman.

(Testimony of Curtis Molton.)

Q. And who was the foreman?

A. Hal Harnack.

Q. That is H-a-r-n-a-c-k?

A. I guess so. I don't know.

Q. Was he our foreman at the time?

A. Yes.

Q. And where did you see him?

A. In the plant.

Q. Anyone else present besides you and he?

A. No.

Q. What was said by each of you, as well as you can now recall?

A. I asked him what happened to my card. He told me that the union had it pulled, due to the back, due to the back dues. [32]

* * * * *

Mr. Karasick: I have asked the reporter to mark as General Counsel's Exhibit 14 for identification the by-laws of Textile Workers Union of America, Local 146, which were in effect at all times material herein, and I offer this document, consisting of a printed booklet of 20 pages, in evidence as General Counsel's Exhibit 14.

(Thereupon, the document above referred to was marked General Counsel's Exhibit No. 14 for identification.) [56]

* * * * *

Mr. Karasick: General Counsel's Exhibit 15 has been marked by the reporter at my request and consists of a form withdrawal card which is issued

by the Respondent Union in situations which are applicable, and I offer that document in evidence as General Counsel's Exhibit 15.

Trial Examiner: Received without objection.

(The document heretofore marked General Counsel's Exhibit 14 for identification was received in evidence.)

(The document above referred to was thereupon marked General Counsel's Exhibit No. 15 for identification and was received in evidence.)

Mr. Karasick: I have asked the reporter, in addition, Mr. Examiner, to mark as General Counsel's Exhibit No. 16 for identification a mimeographed copy of a contract between the Company and the Respondent Union, consisting of some 21 mimeographed pages, together with appendices marked A and B, which, it is agreed between the parties, constitutes the contract which was in force and effect at all times material herein.

Mr. Warner: That is correct.

(Thereupon, the document above referred to was marked General Counsel's Exhibit No. 16 for identification.)

Mr. Karasick: I offer the document as General Counsel's [57] Exhibit 16.

Trial Examiner: Received, without objection.

(The document heretofore marked General Counsel's Exhibit No. 16 for identification was received in evidence.) [58]

SONIA BALTRUN

a witness called by and on behalf of the Respondent Union, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Galliano): Will you state your full name for the purposes of the record?

A. My name is Sonia Baltrun. I am the business manager of the Bay Area Joint Board, and that includes the local, Local 146.

Q. Sonia, you know Mr. Molton, don't you?

A. Well, I don't know him very well. I know——

Q. You know who he is?

A. By sight, yes.

Q. Did you have any conversations with him with respect to his employment with the National Automotive Fibres?

A. You mean with the company regarding him?

Q. Did you have any conversations with Molton?

A. Yes.

Q. In regard to his employment? [66]

A. That is right. I did.

Q. At the company? A. Yes.

Q. Do you recall when, about, the first conversation was that you had with him?

A. It's pretty hard for me to establish the dates because I, as a rule, do not handle any union details in the shops.

Q. What is your best recollection of approximately the time?

(Testimony of Sonia Baltrun.)

A. It was sometime, it could be sometime in April that I first approached——

Q. April of which year? A. '57.

Q. Of '57? A. Right.

Q. And where was that conversation?

A. That conversation took place in the factory in Mr. Cambria's office. That's the factory office there. Because I had to ask the company to ask him to come in to talk to.

Q. Just before you get to that, who was present, in addition to yourself and Mr. Molton, at that conversation?

A. I believe we had—Mr. Waters was there, who was the business agent.

Q. What is his first name?

A. James Waters.

Q. And he is a business agent of the local union? [67] A. That is right.

Q. He is also an employee of the company?

A. No.

Q. All right.

A. And I cannot recall whether it was Ben Statum or Edward Billie. He would probably remember who was present at that meeting.

Trial Examiner: And whose office was this?

The Witness: It was a company office. I made a request to talk to him. I made a request to the company to call him and talk to him.

Q. (By Mr. Galliano): By "him," you mean to talk to Molton? A. Yes, to Molton.

(Testimony of Sonia Baltrun.)

Q. And Mr. Cambria, do you know what his position was with the company?

A. Foreman.

Q. He is a foreman. Now——

Trial Examiner: Was he present during this talk?

The Witness: He came in later; he was.

Q. (By Mr. Galliano): Then, when the conversation started out, Mr. Cambria then was not present? A. No.

Q. But the other persons whom you have mentioned were present? A. That is right. [67-A]

Q. What was the conversation? Tell us in substance and effect what was said by who to your best recollection.

A. I had asked Mr. Molton if he was ready to pay the union what he owes—because I had sent a lot of slips through the stewards asking for——

Trial Examiner: Just confine yourself to what you said, please. Just what you said.

Q. (By Mr. Galliano): Just what was said.

A. That is what I said. I said I sent slips through the stewards and they were not able to collect the money. And I wanted to know if he was going to pay his obligations to the union. And he said at the time that he might pay, he is not—he will try to pay before the meeting.

Q. And your next—— A. If he can.

Q. And your next meeting that you had scheduled would be when?

A. Well, it was in April. I believe we talked

(Testimony of Sonia Baltrun.)

before the meeting of April—I may be wrong on that because I didn't remember the dates. However, he did not pay and then we asked him to appear before the executive board.

Q. Just staying, then, for the moment with the conversation that was held at the company's offices, which you started to tell us about, what else was said at that conversation?

A. Well, outside of that, we asked for the money; I don't remember of anything else that was said. [68]

Q. When you say you asked for the money, what money were you referring to?

Mr. Karasick: I object.

Trial Examiner: I think——

Mr. Karasick: I object to the form of the question.

Trial Examiner: I think she ought to stick to what she said. If she said what form, all right.

Q. (By Mr. Galliano): Was there any discussion in this conversation as to what the money was for? A. Yes.

Q. What was said in respect to that?

A. That he came back, he was dropped from the union rolls, he came back and, therefore, he owed a new initiation or, if he wanted to reinstate himself as a member of the union, he could pay the back money; however, it would be cheaper for him to pay a new initiation, it was put to him in that manner.

Q. Your initiation fee was how much?

(Testimony of Sonia Baltrun.)

A. Ten dollars.:

Q. Do you recall how much back dues were owing?

A. He owed approximately, for the time that he was laid off and didn't offer to pay any money during that period, it was five months. [69]

* * * * *

Q. (By Mr. Galliano): I will show you here General Counsel's Exhibit 9, which is a receipt given on the union's form, on 5/13/57. Can you read that in that photostat? A. Yes.

Q. Now——

A. This was a fine assessment.

Q. Do you know what those items are there?

A. Yes. The dues were paid at that time. It was credited on our ledger for January because——

Q. January of which year?

A. Of '57. (Continuing) —because when anybody comes after a checkoff, the company, we have a checkoff with the company, and if they come after the first—after the first week it is not deducted from their paychecks, and they have to [77] pay.

Mr. Karasick: Excuse the interruption, please, Mrs. Baltrun.

Perhaps this is a little late in stating the objection, but unless the purpose of the question is stated, I would like to object to a further answer on the part of the witness. The document in evidence speaks for itself. I don't know that a further explanation is needed from this witness.

(Testimony of Sonia Baltrun.)

Mr. Galliano: If I may suggest to you, I don't think that the document does speak for itself, because it is not fully explanatory as to what the January was, as to what the fine, the dollar, was for, what the assessment was for. I am trying to find out the whole situation in respect to this.

Trial Examiner: Well, does the General Counsel claim there is anything to be derived from the face of this document that supports his position as to the issue here?

Mr. Karasick: I am not claiming that because of this document the witness was discriminated against. I am claiming——

Trial Examiner: I think we might have an explanation. I don't know that it is material, but I like to know what this fine and what this assessment represent.

Q. (By Mr. Galliano): You have told us that the dues were for the—— [78]

A. The month of January.

Q. Of 1957. You have explained——

Trial Examiner: You told us about the dues.

Q. (By Mr. Galliano): Yes?

A. The fine was credited for the month of April, and I assume that that's——

Trial Examiner: Don't assume. Just what you know.

The Witness. All right.

A. It was credit for the month of April, because he evidently missed a meeting in April and he paid a fine for that meeting.

(Testimony of Sonia Baltrun.)

Q. (By Mr. Galliano): April of '57. This has nothing to do with the past. And then the assessment, the union has an assessment of \$1.00 a year per member.

Trial Examiner: That is called a——

The Witness: That is for '57 also.

Trial Examiner: That is called an assessment, then, that \$1.00?

The Witness: Yes.

Trial Examiner: What is the fine for, for failing to attend a union meeting—how much?

The Witness: A dollar. That was for April of 1957.

Q. (By Mr. Galliano): You will note, in this receipt, which is dated 5/13/57, the dues are credited for January. That is for some months previous? A. That is right. [79]

Q. To 5/13/57? A. Right.

Q. And this dollar, as you have told us, was for failure to attend a meeting? A. Yes.

Q. After he had gone back to work from the layoff? A. That is right.

Q. And he paid that, and then you told us about the assessment. A. Yes. [80]

* * * * *

Cross Examination

Q. (By Mr. Warner): Were you the one in the official capacity of a union officer who requested the dismissal of Mr. Molton?

(Testimony of Sonia Baltrun.)

A. Yes. I have written a letter to Mr. Reinold, asking that he be——

Q. Would you recognize the letter if you saw it?

A. Yes.

Q. Is this the letter? Would you recognize it?

A. Yes.

Q. That is your signature?

A. That is my signature.

Mr. Warner: Would it be possible to submit this in evidence?

Trial Examiner: It may be placed in evidence.

You may mark this as Company Exhibit No. 1.

(Thereupon, the document above referred to was marked Respondent Employer's Exhibit No. 1 for identification.)

Trial Examiner: Is there an objection to this letter?

Mr. Galliano: No objection, sir.

Mr. Karasick: No objection.

Trial Examiner: Received.

(The document heretofore marked Respondent Employer's Exhibit No. 1 for identification was received in evidence.) [83]

* * * * *

Cross Examination * * * * *

Q. (By Mr. Karasick): * * * Is it or is it not true that you were informed by union steward Edward Billie that Molton had requested a withdrawal from the union at the time of his layoff and was told that he would have to pay a dollar fine for non-

(Testimony of Sonia Baltrun.)

attendance at a union meeting in order to secure such a withdrawal?

A. I don't know whether I was informed by him or I asked him, but it could have been either way.

Q. But that knowledge did come to your attention, did it not, Mrs. Baltrun? [85]

A. That is right.

Q. And that is a correct statement, is it not?

A. That is correct.

Q. That Edward Billie—one way or another, you knew that Edward Billie had asked him this, right?

A. Yes. We issue withdrawals only to members in good standing.

Q. Yes, I will come to that in a moment. Then Molton refused to pay the fine at that time, is that right?

A. I don't know. He didn't refuse it to me.

Q. As far as you know, though, he didn't pay the fine. We will put it that way. Right?

A. Right.

Q. And he didn't get a withdrawal card?

A. Right.

Q. Had he paid the dollar fine for non-attendance at the union meeting, he would have gotten a withdrawal card?

A. If he had asked for it and would have paid, he would have.

Q. As you were saying just a moment before, it is the practice of the union to issue withdrawals

(Testimony of Sonia Baltrun.)

to members who are laid off by a company the union has a contract with as long as they are in good standing with the local?

A. I want to qualify this by saying that according to a general rule in the union, we only should issue withdrawals to those leaving the industry, not on layoffs. We do that [86] as a courtesy to the members so they won't have to pay dues, that is all.

Trial Examiner: I am glad that came into it, because I have been reading that article in the by-laws and that is precisely what that article says. It says: "leave the industry."

Mr. Karasick: The witness has explained the practice of the union.

The Witness: We do that as a courtesy to those in good standing, issue withdrawals so they won't have to tender their dues right along. Sometimes the layoffs may be 30 days and other times they may be six months. We feel it is a burden to hold them to that duty of keeping up their dues, so we do that as a courtesy to our members when they are laid off.

Q. (By Mr. Karasick): I see. Now, in order to be in good standing, I think you have already indicated the dues and fines and assessments of a member have to be paid up to date.

A. In order to get a withdrawal on the basis we would give one. If they had left the industry, this question would not have arisen; they would have gotten a withdrawal because they would have left the industry. But in order to hold them in good

(Testimony of Sonia Baltrun.)

standing while they are on a layoff, we give them withdrawals as a courtesy, if they are paid up.

Q. I think you have already testified, have you not, that [87] a member of the local who has a withdrawal card need not pay dues during the period of his layoff?

A. That is right. If they get a withdrawal, they do not.

Q. That is right. And then they may be subsequently reinstated into the local without payment of any initiation fee or reinstatement fee, if they have a withdrawal card, is that right?

A. That is right. That is the purpose of a withdrawal.

Q. If Molton here had secured a withdrawal card in accordance with the regulations you have outlined, there wouldn't have been this problem of the back dues or the probable reinstatement fee, is that correct?

Mr. Galliano: We object to that as being conjectural. It is not within the issues.

Mr. Karasick: I think it is according to the practices of the union.

Trial Examiner: I suppose her position qualifies her to answer as to what is a standard practice of the union. She may answer.

A. Well, that is our standard practice, I should say.

Q. (By Mr. Karasick): Yes, if a member—

A. If they are in good standing, we give them

(Testimony of Sonia Baltrun.)

a courtesy withdrawal, those who do not leave the industry.

Q. In other words, on a layoff, if he had had a withdrawal card and he was reinstated by the company, he would start [88] paying dues at that time, but he would not have to pay any back dues or any reinstatement fee, isn't that correct?

A. That is right.

I would just like to qualify that. This is only a practice in our local. Some of the other unions and locals do not give them unless they leave the industry. They don't give them. They have to tender their dues right along.

Q. So the practice varies from local to local?

A. Yes.

Q. And your local has followed the practice you have just testified about?

A. Yes; if they are in good standing, we do issue them a withdrawal card.

Q. I am right, am I not, in saying, or asking you, is this correct, that only members of the local are permitted to attend union meetings?

A. That is correct.

Q. During the period of Molton's layoff he was not expelled by the union, was he?

A. He was dropped from the rolls for non-payment of dues.

Q. There is a formal proceeding for expulsion, is there not, provided for in the by-laws?

A. No. It is not an expulsion. It is just dropping from the rolls. Expulsion means if a person

(Testimony of Sonia Baltrun.)

does something that the union may have a trial over, then they expel them, if they see [89] fit. If a member does not pay dues, he is just dropped after a certain period.

Q. Does he still remain a member?

A. No. He is dropped from the rolls after a certain period; according to the by-laws, three months of non-payment is suspension, four months expulsion, but we don't officially expel anyone. They are just dropped because they do not respond, and they are dropped after the fourth month. However, we do have—pardon me, I do have a practice in that particular local, I happen to be also financial secretary of the local and I do send letters to every member in the beginning when they leave, either on the layoff or discharge or whatever it may be, send them a letter asking them to produce their book so that they can get a withdrawal card. They have to turn in their book so that we can check it, their dues book. And also after we check their book we may issue the withdrawal or we may say: "You owe dues," whatever it may be. Now, that is the practice of this particular local.

Q. (By Mr. Karasick): After Molton was finally discharged—when was it, July 9th, of last year—the union then expelled him from membership, did it not?

A. No, we did not; but we dropped him.

Q. You dropped him?

A. There was no regular expulsion.

(Testimony of Sonia Baltrun.)

Q. I see. But he wasn't considered a member any longer? [90]

A. No. After the fourth month he is not a member. [91]

* * * * *

Q. * * * Now, when Molton came back to work for the company in January of 1957, last year, was he regarded as a member in good standing even though he hadn't paid these back dues?

A. No, he was not.

Q. And he wouldn't have been until he was paid up, is that right? [95]

A. Not in good standing.

Q. Would he have been a member?

A. No, not until he had paid his reinstatement or the new initiation fee.

Q. And he never did? A. No.

Q. I think you testified that only members attend union meetings. Correct? A. Correct.

Q. Why then was Molton fined for non-attendance of a union meeting in April 1957 when you didn't consider him as a member when he hadn't paid his fees?

Trial Examiner: Mr. Karasick—

Mr. Karasick: That is his credibility, in terms of her testimony, sir.

Trial Examiner: How does credibility come into this?

(Testimony of Sonia Baltrun.)

Mr. Karasick: The witness has been asked, over my objection, as to an explanation of a receipt. She gave the explanation, as you recall. I am entitled to explore that, in terms of what she has now testified.

Trial Examiner: She testified as to the receipt, that one item on it was a fine for failure to attend a union meeting.

Mr. Karasick: In April 1957.

Trial Examiner: That is correct.

Mr. Karasick: Now I am entitled to show, as I have [96] already demonstrated on this record, according to the testimony of this witness, this individual wouldn't have——

Trial Examiner: You propose to show that it wasn't for non-attendance at a union meeting in 1957, since he hadn't paid his fees, is that correct?

Mr. Karasick: That is it. That is the time she says, certainly.

Trial Examiner: All right, if that is your purpose, the witness may answer the question.

Trial Examiner: You understand, I still don't think it has any materiality whatever. I am going to humor you on this, as far as we seem to find it necessary.

Mr. Karasick: I appreciate your indulgence.

A. In the first place, I don't think anyone forced him or asked him to pay those particular items at

(Testimony of Sonia Baltrun.)

that time. He paid them voluntarily. Secondly, I believe that the man was being, was, on a checkoff, automatically reinstated by the company. When they come back from a layoff, because they have these checkoff papers, they reinstate them automatically, every one. The company does not know until we go to them whether they are in good standing with us or not. So in the meantime we were dickering ever since January for him to pay up and get himself reinstated. That is the answer.

Q. (By Mr. Karasick): The company, of course, does not determine who is or who is not a member of the union, does it? [97]

A. No. That is why they had the checkoff right along for him, with the exception of the month of January.

Q. Yes. That is the only answer? That is the best answer you have to give us?

A. That is right. And we were dickering for him to get himself fully reinstated.

* * * * *

Q. (By Mr. Karasick): Molton's dues were checked off by the company beginning in February and running through the month of July, is that correct? A. Yes, sir.

Q. And then he paid the January dues, as evidenced by this receipt that has already been shown, right? A. Right. [98]

* * * * *

SONIA BALTRUN

a witness recalled for and on behalf of the Respondent Union, having been previously sworn, was examined and testified further as follows:

Redirect Examination [104]

* * * * *

Q. (By Mr. Galliano): With respect to Molton going to a steward for a withdrawal card, did you get any information in respect to that?

A. I got information from Ed Billie, who was the shop chairman at the time, that there was some discussion with Molton on his withdrawal card and that at this discussion Molton made a statement that he does not want a withdrawal card, he is not coming back to work. [109]

* * * * *

Trial Examiner: Where is this steward that is reputed to have told her these things? Is he available?

Mr. Galliano: He is at work.

Trial Examiner: You don't intend to present him?

Mr. Galliano: I don't like to delay the hearing. If arrangements could be made for him to get off of work and get over here immediately, I would very much like to have him.

Trial Examiner: Well, it is a matter of your discretion as to what you put on.

Mr. Galliano: On the basis of the record, I am satisfied with the record on the proof of the matter which I wanted to prove.

Trial Examiner: That is entirely a matter of your discretion. [114]

* * * * *

LLOYD E. BROWN

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

* * * * *

Q. (By Mr. Karasick): Mr. Brown, what is your position with the company?

A. Paymaster, paymaster there. [115]

* * * * *

Trial Examiner: Did you have knowledge from this union representative that this employee was behind in the sense of both dues and fines?

The Witness: Yes, I did. I hear that from Mrs. Baltrun, voluntarily on her part. I mean I never ask those questions, myself, because I have no concern with them.

Q. (By Mr. Karasick): And then on July 9th finally the [120] foreman came to you and told you the union was demanding Molton's discharge and asked you to make out a check to pay him up to and through that day, or up to that day, isn't that right?

A. That is correct. [121]

* * * * *

HAROLD HARNACK

called by and on behalf of the General Counsel, on rebuttal, being first duly sworn, was examined and testified as follows:

Direct Examination

* * * * *

Q. (By Mr. Karasick): You are employed by National Automotive Fibres, Inc., are you not?

A. That is right. [130]

* * * * *

Q. What is your job?

A. I am a foreman.

* * * * *

Q. You recall the discharge of Molton, do you not? A. Yes, I do.

Q. I mean, the incident itself?

A. Correct. [131]

* * * * *

Q. (By Mr. Karasick): Mr. Harnack, about a week before this incident we are talking about, is it correct that Gus Billie, a union steward, told you that Molton had failed to get a withdrawal card during a layoff in July 1956?

* * * * *

A. He had mentioned it only because it was common knowledge throughout the plant that there was some disagreement between Molton and his union. And in the manner of conversation he spoke about it and he said that there would be a meeting to see if they could get together and, if not, I guess, Molton would be discharged for that reason. But he

(Testimony of Harold Harnack.)

didn't come to me [132] officially as a union steward, giving information as a man working for the company. It was strictly conversation.

* * * * *

Q. He told you about this withdrawal and he told you, did he not, that if Molton hadn't been so stubborn about not paying a dollar fine he would have had the withdrawal?

A. That would be about the contents of the conversation.

Trial Examiner: You used the word "incident." Did you establish what incident in your preliminary question?

Mr. Karasick: Yes. The incident was the discharge of Molton and this was about a week before.

Trial Examiner: As long as the witness is clear.

Mr. Karasick: I think the witness understands.

Q. (By Mr. Karasick): Do you not?

A. I am not aware of the whole incident, but I am aware of the conversation, by talking to Billie.

Q. Before the discharge? A. That is right.

Q. Then, on the morning of the discharge itself you were acting as Molton's foreman because his foreman was on vacation? A. That is right.

Q. Johnny Cambria was his regular department foreman?

A. That is right. I had pad assembly and Cam-

(Testimony of Harold Harnack.)

bria had cotton garnatt and was Molton's supervisor. And he was on vacation so I doubled over and took both jobs.

Q. On that morning Mr. Chartier—who is the superintendent of the plant, is he not?

A. That is right.

Q. (Continuing) —talked to you about Molton and the ultimate discharge, did he not?

A. No. He called me on the phone and said there was a meeting that had been that morning, or the day prior, I don't know, but the union requested Molton's termination because of a dues situation. Now, that is as familiar as I was with it, through Mr. Chartier. And it's proper procedure for the foreman to make out the termination rate sheet. And, of course, I [134] was informed to do that because that was the procedure.

* * * * *

Q. Now, this is correct is it not: When Mr. Chartier talked to you he told you that Molton would have to be terminated because he refused to pay union dues and some fines and assessments that related to his failure to attend a union meeting?

A. He said, "At the request of the union, we must terminate"—

Q. Yes? A. Right.

Q. But with that exception, that is correct?

A. That is the essence—correct. [135]

* * * * *

(Testimony of Harold Harnack.)

Q. The union was demanding that, according to Mr. Chartier, that Molton be discharged because he had failed to pay dues and because he had failed to pay assessments and fines that arose out of a failure to attend a union meeting, isn't that correct?

A. That could be correct. I would say it is correct as well as I can remember, right.

Q. And this is what he told you on that occasion?
A. That is right. [137]

* * * * *

GENERAL COUNSEL'S EXHIBIT No. 9

[Receipt]

Date 5-13-57

A 15805

Local No. 146

Textile Workers Union of America

Affiliate of the C.I.O.

Received from Curtis Molton 1914
check for five & no/100 Dollars

	Initiations	\$....	
	Dues Jan.	\$3.00	
For	Fine	\$1.00	
	Asst.	\$1.00	Total \$5.00
Union Label	Form C20	/s/ J. Clark.	

GENERAL COUNSEL'S EXHIBIT No. 14

By-Laws

Textile Workers Union of America

. * * * * *

ARTICLE VI

Membership

* * * * *

Dues and Initiations

Section 2. (a) The intiation fee for membership in this local union shall not be less than \$2.50 for new groups and \$10.00 for those groups under agreement.

(b) Each member shall pay dues of not less than \$24.00 per year, payable at the rate of \$2.00 per month. Members who are employed or who are employed only part time, working at least a day in any month must pay dues in advance for that month.

(c) A member shall cease to be in good standing in this local union and in the Textile Workers' Union of America if he or she is more than three months in arrears in the payment of dues and assessments. To reinstate themselves after that period member must pay all dues and assessments in full at the time of initiation fee, at the time of reinstatement. No part payment can be made. Such a member must appear before Executive Board to explain their negligence.

(d) A member may be expelled after notice if by the 10th of the fourth month such a member is

General Counsel's Exhibit No. 14—(Continued)

more than four months in arrears in the payment of dues and assessments. A member who has been expelled for non-payment of dues or assessments may be reinstated only upon payment of the regular initiation fee together with all monies due at the time of the expulsion, unless otherwise ordered by the local Executive Board.

ARTICLE VII

Transfers and Withdrawals

Section 1.

* * * * *

(b) Any member who is in good standing in this local union may withdraw from membership upon leaving the textile industry and shall receive a withdrawal card. Thereafter, the withdrawal member shall lose all rights and privileges of a membership of this local union, and the Textile Workers' Union of America, and shall be exempt from the payment of dues and assessments. A member who has withdrawn may subsequently be reinstated without payment of initiation fee, provided, however, he or she reinstates themselves before one year from date withdrawal card is issued or provided, the withdrawal card is renewed at the expiration date by paying one month's dues. During such a period that a member is on withdrawal he must not engage in any activities against the best interests of the local union and Textile Workers' Union of America.

* * * * *

GENERAL COUNSEL'S EXHIBIT No. 16

AGREEMENT

This agreement is made and entered into this first day of May 1956 by and between the Oakland Division, National Automotive Fibres, Inc., at 2230 Livingston Street, Oakland 6, California, hereinafter called "Company" and the Textile Workers Union of America, affiliated with the American Federation of Labor and the Congress of Industrial Organization, hereinafter called the "Union."

* * * * *

Article II—Recognition and Conditions
of Employment

* * * * *

B. Membership in Union.

(1) New workers not enrolled in the Union shall be requested to make application for membership within six (6) weeks if retained in employment, and to sign an application card in the Union during the first week of employment.

(2) Membership in the Union, effective six (6) weeks after the first Monday following the date of hire, shall be a condition of employment; provided, that the Company shall not be obligated hereunder to discharge or discriminate against any employee for non-membership in the Union:

(a) If the Company has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or,

General Counsel's Exhibit No. 16

(b) If the Company has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership.

* * * * *

[Endorsed] No. 16473. United States Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. National Automotive Fibres, Inc., and Textile Union Local No. 146, Textile Workers Union of America, AFL-CIO, Respondents. Transcript of Record. Petition for Enforcement of Order of the National Labor Relations Board.

Filed: June 23, 1959.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

United States Court of Appeals
For the Ninth Circuit

No. 16473

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

NATIONAL AUTOMOTIVE FIBRES, INC.;
AND TEXTILE UNION LOCAL No. 146,
TEXTILE WORKERS UNION OF AMER-
ICA, AFL-CIO, Respondents.

PETITION FOR ENFORCEMENT OF AN
ORDER OF THE NATIONAL LABOR
RELATIONS BOARD

To the Honorable, the Judges of the United States
Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Secs. 151 et seq., as amended by 72 Stat. 945), hereinafter called the Act, respectfully petitions this Court for the enforcement of its Order against Respondents, National Automotive Fibres, Inc. (hereinafter called Respondent Company) its agents, successors and assigns, and Textile Workers Union of America, AFL-CIO, (hereinafter called Respondent Union) its officers, representatives, agents, successors and assigns. The proceeding resulting in said order is known upon

the records of the Board as Case Nos. 20-CA-1371, and 20-CB-538.

In support of this petition the Board respectfully shows:

(1) Respondent Company is a Delaware corporation engaged in business in the State of California, and Respondent Union is a labor organization engaged in promoting and protecting the interests of its members in the State of California, both within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) Upon due proceedings had before the Board in said matter, the Board on October 14, 1958, duly stated its findings of fact and conclusions of law, and issued an Order directed to the Respondent Company, its agents, successors, and assigns, and to the Respondent Union, its officers, representatives, agents, successors, and assigns. On the same date, the Board's Decision and Order was served upon Respondents by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Respondents' counsel.

(3) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, the Board is certifying and filing with this Court a transcript of the entire record of the proceeding before the Board upon which the said Order was entered, which transcript includes the pleadings, testimony and evidence, findings of fact, conclusions of law, and the Order of the Board sought to be enforced.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon the Respondents and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the Order made thereupon a decree enforcing in whole said Order of the Board and requiring Respondent Company, its agents, successors, and assigns and Respondent Union, its officers, representatives, agents, successors and assigns to comply therewith.

Dated at Washington, D. C. this 12th day of May, 1959.

/s/ THOMAS J. McDERMOTT,
Associate General Counsel, Na-
tional Labor Relations Board.

[Endorsed]: Filed May 15, 1959. Paul P. O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

ANSWER

(1)

Now the respondent Company answers the complaint in the above entitled matter.

Admits to the allegations of paragraphs 1, 2, 3, and 4 of the said complaint with reservations listed below.

Certain divisions as listed in the original complaint are no longer owned or operated by the Company, one of which is the Oakland Division.

(2)

Denies each, every and all generally and specifically the allegations of paragraphs 5, 6, 7, 8, 9, and 10 of the said complaint with reservations listed below.

The respondent Company on demand of the respondent Union did discharge Curtis Molton for failure to pay Dues and an Initiation fee uniformly required as a condition of acquiring or retaining membership in the respondent Union, pursuant to the lawful collective bargaining agreement in effect between the respondent Union, and the respondent Company.

May 29, 1959.

/s/ N. A. WARNER,
N. A. Warner,
Industrial Relations, NAFI
Corporation.

[Endorsed]: Filed June 1, 1959. Paul P. O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

ANSWER

As a respondent Union, wish to answer the complaint in the above Case No. 20-CB-538, against the said Union.

We herewith deny allegations against the Union, except, the Union did cause discharge of Curtis Molton for failure to pay dues and/or Initiation fees uniformly required as a condition of retaining membership in the Union.

This is in conformity with the lawful collective bargaining agreement then in effect between the Union and the respondent Company.

/s/ SONIA BALTRUN,
Textile Workers Union of A. Local fin. sec. and
Joint Board Business Manager.

[Endorsed]: Filed June 2, 1959. Paul P. O'Brien,
Clerk.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH
PETITIONER INTENDS TO RELY

The National Labor Relations Board, petitioner herein, in accordance with the rules of this Court, hereby states the following as the points on which it intends to rely herein:

1. The Board properly held that the Union violated Section 8 (b) (2) and (1) (A) of the Act by causing the Company to discharge an employee for failure during a layoff period to pay dues which would not have been imposed had he paid a union fine.

2. The Board properly held that the Company has reasonable grounds for believing that the employee it discharged at the Union's behest had been suspended from union membership for reasons other than a failure to tender "periodic dues" "uniformly required."

Dated at Washington, D. C., this 19th day of June, 1959.

/s/ MARCEL MALLET-PREVOST,
Assistant General Counsel, Na-
tional Labor Relations Board.

[Endorsed]: Filed June 23, 1959. Paul P. O'Brien, Clerk.

